

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

LOR XIONG,

No. CIV.S-04-2231 DAD

Plaintiff,

v.

ORDER

JO ANNE B. BARNHART,  
Commissioner of Social  
Security,

Defendant.

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This social security action was submitted to the court, without oral argument, for ruling on plaintiff's motion for summary judgment and defendant's cross-motion for summary judgment. For the reasons explained below, the decision of the Commissioner of Social Security ("Commissioner") is affirmed.

**PROCEDURAL BACKGROUND**

Plaintiff Lor Xiong applied for Supplemental Security Income under Title XVI of the Social Security Act (the "Act"). (Transcript (Tr.) at 42-46.) The Commissioner denied plaintiff's

1 application initially and on reconsideration. (Tr. at 29-32, 34-38.)  
2 Pursuant to plaintiff's request, a hearing was held before an  
3 administrative law judge ("ALJ") on May 12, 2004, at which time  
4 plaintiff was represented by counsel. (Tr. at 208-20.) In a  
5 decision issued on May 21, 2004, the ALJ determined that plaintiff  
6 was not disabled. (Tr. at 7-19.) The ALJ entered the following  
7 findings:

- 8 1. The claimant has not engaged in  
9 substantial gainful activity since the  
alleged onset of disability.
- 10 2. The claimant's low back pain and  
11 moderate recurrent major depression  
without psychotic features are  
12 considered "severe" based on the  
requirements in the Regulations (20 CFR  
13 § 416.920(b)).
- 14 3. These medically determinable  
15 impairments do not meet or medically  
equal one of the listed impairments in  
16 Appendix 1, Subpart P, Regulation No.  
4.
- 17 4. The undersigned finds the claimant's  
18 allegations regarding her limitations  
are not totally credible for the  
19 reasons set forth in the body of the  
decision.
- 20 5. The claimant has the following residual  
functional capacity: lift 20 pounds  
21 occasionally and 10 pounds frequently,  
walk/stand six hours, sit six hours,  
22 occasionally perform postural  
activities, and mentally perform simple  
23 routine tasks. She has no  
manipulative, visual, communicative,  
24 environmental, or other mental  
limitations.
- 25 6. The claimant has no past relevant work  
26 (20 CFR § 416.965).

- 1           7.    The claimant is a 'younger individual'  
2               (20 CFR § 416.963).
- 3           8.    The claimant is 'illiterate' (20 CFR §  
4               416.964).
- 5           9.    The claimant has the residual  
6               functional capacity to perform  
7               substantially all of the full range of  
8               light work (20 CFR § 416.967).
- 9           10.   Based on an exertional capacity for  
10               light work, and the claimant's age,  
11               education, and work experience,  
12               Medical-Vocational Rule 202.16,  
13               Appendix 2, Subpart P, Regulations No.  
14               4 would direct a conclusion of "not  
15               disabled."
- 16           11.   The claimant's capacity for light work  
17               is substantially intact and has not  
18               been compromised by any nonexertional  
19               limitations. Accordingly, using the  
20               above-cited rule(s) as a framework for  
21               decision-making, the claimant is not  
22               disabled.
- 23           12.   The claimant was not under a  
24               "disability," as defined in the Social  
25               Security Act, at any time through the  
26               date of this decision (20 CFR §  
              416.920(g)).

(Tr. at 18.) The Appeals Council declined review of the ALJ's decision on August 26, 2004. (Tr. at 4-5.) Plaintiff then sought judicial review, pursuant to 42 U.S.C. § 405(g), by filing the complaint in this action on October 20, 2004.

#### **LEGAL STANDARD**

The Commissioner's decision that a claimant is not disabled will be upheld if the findings of fact are supported by substantial evidence and the proper legal standards were applied. Schneider v. Comm'r of the Soc. Sec. Admin., 223 F.3d 968, 973 (9th Cir. 2000);

1 Morgan v. Comm'r of the Soc. Sec. Admin., 169 F.3d 595, 599 (9th Cir.  
2 1999). The findings of the Commissioner as to any fact, if supported  
3 by substantial evidence, are conclusive. See Miller v. Heckler, 770  
4 F.2d 845, 847 (9th Cir. 1985). Substantial evidence is such relevant  
5 evidence as a reasonable mind might accept as adequate to support a  
6 conclusion. Morgan, 169 F.3d at 599; Jones v. Heckler, 760 F.2d 993,  
7 995 (9th Cir. 1985) (citing Richardson v. Perales, 402 U.S. 389, 401  
8 (1971)).

9 A reviewing court must consider the record as a whole,  
10 weighing both the evidence that supports and the evidence that  
11 detracts from the ALJ's conclusion. See Jones, 760 F.2d at 995. The  
12 court may not affirm the ALJ's decision simply by isolating a  
13 specific quantum of supporting evidence. Id.; see also Hammock v.  
14 Bowen, 879 F.2d 498, 501 (9th Cir. 1989). If substantial evidence  
15 supports the administrative findings, or if there is conflicting  
16 evidence supporting a finding of either disability or nondisability,  
17 the finding of the ALJ is conclusive, see Sprague v. Bowen, 812 F.2d  
18 1226, 1229-30 (9th Cir. 1987), and may be set aside only if an  
19 improper legal standard was applied in weighing the evidence, see  
20 Burkhart v. Bowen, 856 F.2d 1335, 1338 (9th Cir. 1988).

21 In determining whether or not a claimant is disabled, the  
22 ALJ should apply the five-step sequential evaluation process  
23 established under Title 20 of the Code of Federal Regulations,  
24 Sections 404.1520 and 416.920. See Bowen v. Yuckert, 482 U.S. 137,  
25 140-42 (1987). This five-step process can be summarized as follows:

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1 Step one: Is the claimant engaging in substantial  
2 gainful activity? If so, the claimant is found  
not disabled. If not, proceed to step two.

3 Step two: Does the claimant have a "severe"  
4 impairment? If so, proceed to step three. If  
not, then a finding of not disabled is  
5 appropriate.

6 Step three: Does the claimant's impairment or  
combination of impairments meet or equal an  
7 impairment listed in 20 C.F.R., Pt. 404, Subpt.  
P, App. 1? If so, the claimant is conclusively  
8 presumed disabled. If not, proceed to step four.

9 Step four: Is the claimant capable of performing  
his past work? If so, the claimant is not  
10 disabled. If not, proceed to step five.

11 Step five: Does the claimant have the residual  
functional capacity to perform any other work?  
12 If so, the claimant is not disabled. If not, the  
claimant is disabled.

13 Lester v. Chater, 81 F.3d 821, 828 n.5 (9th Cir. 1995). The claimant  
14 bears the burden of proof in the first four steps of the sequential  
15 evaluation process. Yuckert, 482 U.S. at 146 n.5. The Commissioner  
16 bears the burden if the sequential evaluation process proceeds to  
17 step five. Id.; Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir.  
18 1999).

#### 19 APPLICATION

20 Plaintiff advances only one argument in her motion for  
21 summary judgment. In this regard, plaintiff argues that the ALJ  
22 erred in his reliance on the Medical-Vocational Guidelines (the  
23 "grids") in determining whether plaintiff is capable of performing  
24 any other work that exists in the national economy.

25 At the fifth and final step of the sequential evaluation  
26 process, the Commissioner can satisfy the burden of showing that the

1 claimant can perform other types of work in the national economy,  
2 given the claimant's age, education, and work experience, by either:  
3 (1) applying the Medical-Vocational Guidelines (the "grids") in  
4 appropriate circumstances; or (2) taking the testimony of a  
5 vocational expert ("VE"). See Polny v. Bowen, 864 F.2d 661, 663 (9th  
6 Cir. 1988); Burkhart, 856 F.2d at 1340 (citing Desrosiers v. Sec'y of  
7 Health & Human Servs., 846 F.2d 573, 578 (9th Cir. 1988) (Pregerson,  
8 J., concurring)).

9         The grids are designed to show available work in the  
10 national economy for individuals with exertional (i.e., strength)  
11 limitations, as impacted by the factors of age, education, and work  
12 experience. 20 C.F.R. Pt. 404, Subpt. P, App. 2, § 200.00(d) & (e).  
13 They may be utilized as long as they "accurately and completely  
14 describe the claimant's abilities and limitations." Burkhart, 856  
15 F.2d at 1340 (citing Jones, 760 F.2d at 998). See also Reddick v.  
16 Chater, 157 F.3d 715, 729 (9th Cir. 1998); 20 C.F.R. Pt. 404, Subpart  
17 P, App. 2, § 200.00(b). However, when a claimant's nonexertional  
18 limitations are sufficiently severe to significantly limit the range  
19 of work permitted by exertional limitations, the grids are  
20 inapplicable. See Burkhart, 856 F.2d at 1340; Desrosiers, 846 F.2d  
21 at 577; see also Heckler v. Campbell, 461 U.S. 458, 462 n.5 (1983).

22         In arguing that the ALJ erred in relying on the grids,  
23 plaintiff asserts that the ALJ should have heard testimony from a  
24 vocational expert due to plaintiff's alleged "moderate limitations in  
25 maintaining attendance and completing a normal workday" as a result  
26 of her alleged mental impairment. (Pl.'s Mot. for Summ. J. at 8.)

1 However, while a nonexamining state agency physician opined that  
2 plaintiff is moderately limited in this regard (Tr. at 163), Michael  
3 Joyce, M.D., the physician who performed a comprehensive psychiatric  
4 examination of plaintiff, found plaintiff capable of maintaining  
5 attendance, performing within a schedule and completing a workday and  
6 workweek without interruption (Tr. at 132-33). Taken alone, the  
7 opinion of Dr. Joyce, who independently examined plaintiff, is  
8 substantial evidence supporting the ALJ's determination that  
9 plaintiff's alleged difficulty in maintaining attendance did not  
10 significantly limit her ability to perform light, unskilled jobs.  
11 See Andrews v. Shalala, 53 F.3d 1035, 1041 (9th Cir. 1995) (opinion of  
12 nontreating source may itself be substantial evidence where opinion  
13 is based on independent clinical findings that differ from those of  
14 the treating physician). Indicating that plaintiff could sit for an  
15 8-hour work period without interruption and stand or walk for up to 6  
16 hours during a workday, the opinion of Sanford Selcon, M.D. also  
17 indicates that plaintiff is able to maintain attendance at work.  
18 (Tr. at 127.) While Dr. Selcon is an internal medicine specialist  
19 and did not comment on plaintiff's mental condition, his opinion as  
20 to plaintiff's ability to complete a workday is relevant. Finally,  
21 the court notes that at the administrative hearing, in response to  
22 the question "So what keeps you from working?", plaintiff testified:  
23 "I have neck pain, shoulder, my back, low back and travel down to my  
24 leg, and my bone, my hand, my joints, all over." (Tr. at 214.)  
25 Plaintiff's omission of any mental complaints in this regard further  
26 /////

1 undermines her present contention that her mental limitations render  
2 her incapable of attending work regularly.

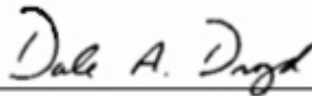
3 For these reasons, the court finds that substantial  
4 evidence in the record supports the ALJ's determination that  
5 plaintiff's alleged difficulty in maintaining attendance did not  
6 significantly limit her ability to perform light, unskilled jobs.  
7 Testimony from a vocational expert was not necessary under the  
8 circumstances.

9 **CONCLUSION**

10 Accordingly, the court HEREBY ORDERS that:

- 11 1. Plaintiff's motion for summary judgment is denied;  
12 2. Defendant's cross-motion for summary judgment is  
13 granted; and  
14 3. The decision of the Commissioner denying benefits is  
15 affirmed.

16 DATED: January 12, 2006.

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18 DALE A. DRCZD  
19 UNITED STATES MAGISTRATE JUDGE

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